

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 22, 2006

Regulation Package #1105-17

CDSS MANUAL LETTER NO. CCL-06-04

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,
DIVISION 6, CHAPTER 8.8, FOSTER FAMILY AGENCIES

Regulation Package #1105-17**Effective 8/10/06****Section 88019**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/FosterFami_628.htm.

These regulations add or make changes to the Criminal Record Clearance sections in six regulation categories; add or make changes to the Criminal Record Exemption sections in five regulation categories; and add or make changes to the Penalties sections in five regulation categories. All revised or added regulations are mandated by Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, which were amended by Senate Bill (SB) 1240, Chapter 653, Statutes of 2004, Assembly Bill (AB) 358, Chapter 628, Statutes of 2004 and the Gresher v. Anderson decision (Alameda County Superior Ct. No. 8074577). SB 1240 increases an existing one-time civil penalty for allowing an individual to work or reside in a licensed facility without a criminal record clearance or exemption to an ongoing, per day civil penalty. SB 1240 also allows for the transfer of criminal history information between county and state licensing agencies. AB 358 expands the list of persons who are exempt from submitting fingerprints for a criminal background check. The Gresher v. Anderson Decision: permits certified family home employees to seek a criminal record exemption on their own behalf; permits terminated employees to seek a criminal record exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; requires that the licensing agency list the convictions that require a criminal record exemption; and requires that the licensing agency list the specific reason(s) the exemption was denied.

These regulations specify who must submit fingerprints for a criminal record review and who is exempt; that persons subject to a criminal record review be cleared or have a criminal record exemption prior to working or residing in a licensed facility; and the resulting civil penalty for violation of background check requirements. They were also amended to eliminate duplication of Section 80019.

These regulations were considered at the Department's public hearing held on March 15, 2006.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-06-03. The latest prior manual letter containing Foster Family Agencies regulation changes was Manual Letter No. CCL-05-05.

Page(s)

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Replace(s)

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Attachments

NH

88019 CRIMINAL RECORD CLEARANCE**88019**

(a) In addition to Section 80019, the following shall apply:

- (1) Prior to certification by the foster family agency, the applicant and all adults residing in the home shall obtain a criminal record clearance or exemption as specified in Health and Safety Code Section 1522.
- (2) Prior to being home alone with or having supervisory control of children, all foster family agency personnel shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code Section 1522.
- (3) In addition the requirements of 80019(d)(1)(A), all individuals subject to criminal record review pursuant to Health and Safety Code Section 1522 shall, declare whether he/she has been arrested for any crime against a child, spousal cohabitant abuse or for any crime as provided in 80019.1(m).

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1522 and 1522.07, Health and Safety Code.

88019.2 CHILD ABUSE CENTRAL INDEX**88019.2**

- (a) Prior to certifying a home, the foster family agency shall ensure that the Department has conducted a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1522.1 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s) and all individuals subject to a criminal record review pursuant to Health and Safety Code Section 1522(d) and shall have the authority to approve or deny certification, employment, residence or presence in the licensed facility based on the results of the review.
- (1) The foster family agency shall submit the Child Abuse Central Index checks (LIC 198A [3/99]) for all individuals required to be checked directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 88019(a).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).
- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. Certification of a home shall not be denied based upon a report from the CACI unless the Department substantiates an allegation of child abuse.
- (b) The foster family agency shall submit Child Abuse Central Index checks (LIC 198A [3/99]) directly to the California Department of Justice for all foster family agency personnel who have contact with children in accordance with Health and Safety Code Section 1522.1.
- (c) Subsequent to certification, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(b), shall complete a Child Abuse Central Index check (LIC 198A [3/99]), prior to employment, residence or initial presence in the certified family home.
- (1) The foster family agency shall submit the Child Abuse Central Index check (LIC 198A [3/99]) directly to the California Department of Justice with the individual's fingerprints as required by Section 88019(a) prior to the individual's employment, residence or initial presence in the home.
- (2) The Department shall check the CACI pursuant to Penal Code Section 11170(b)(3), and shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.